

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 v.  
12 Plaintiff,

13 SUMIT GARG,  
14 Defendant.

CASE NO. CR21-0045-JCC

ORDER

15 This matter comes before the Court on Defendant's motion *in limine* seeking five  
16 evidentiary rulings. (Dkt. No. 766.) Having thoroughly considered the parties' briefing  
17 and the relevant record, the Court hereby DENIES Defendant's motion (*Id.*) for the  
18 reasons explained herein.

19 **I. BACKGROUND**

20 Defendant petitions the Court to exclude: (1) testimony by his former roommate,  
21 Melissa Hutchins, concerning prior acts of violence by Defendant; (2) references to  
22 Defendant's alleged mental disorder ("IED"); (3) supposedly "speculative" testimony  
23 from Lindsay Hefton, Kailey Kang, and Gary Ernsdorff; and (4) all social media and  
24 email evidence. (*See generally* Dkt. No. 766 at 3–15.) The Government opposes all of the  
25 requests arguing that they fail on the merits. (Dkt. No. 769.) The Court addresses  
26 Defendant's arguments in turn.

1       **II. DISCUSSION**

2           **A. Melissa Hutchins's Testimony**

3           Defendant first requests that Ms. Hutchins be prevented from testifying to  
 4 statements he made about engaging in acts of violence. (Dkt. No. 766.) Defendant does  
 5 not identify which statement(s) he seeks to suppress. (*See id.*) The Government opposes,  
 6 arguing that such statements are admissible as evidence of Ms. Hutchins' reasonable fear  
 7 of harm from Defendant. (Dkt. No. 769 at 3.) "To be relevant, evidence need only tend to  
 8 prove the government's case, and evidence that *adds context* and dimension to the  
 9 government's proof of the charges can have that tendency." *United States v. Gonzalez*,  
 10 110 F.3d 936, 941 (2d Cir. 1997) (emphasis added). In other words, relevant evidence is  
 11 not confined to that which directly establishes an element of the crime. *Gonzalez*, 110 F.3d  
 12 at 941. Here, statements made by Defendant to Ms. Hutchins concerning his previous acts  
 13 of violence unequivocally adds important context to the Government's case. Such  
 14 evidence would be relevant in showing Defendant's intent, his modus operandi in carrying  
 15 out his stalking campaign, and the likely state of mind of his victim Ms. Hutchins. And  
 16 while the Government indicates it does not seek to introduce evidence of underlying  
 17 violent crimes, were the Government to attempt to do so, Defendant may lodge an  
 18 objection which the Court will address at that time.

19           Accordingly, Defendant's motion (Dkt. No. 766) is DENIED as it relates to the  
 20 suppression of Ms. Hutchins's testimony.

21           **B. References to Mental Health Disorders**

22           Defendant next petitions the Court to exclude references to his mental health. (Dkt.  
 23 No. 766.) Specifically, he seeks to prevent Ms. Hutchins from testifying to statements he  
 24 made about having "intermittent explosive disorder" ("IED"). (*Id.* at 6–7.) The  
 25 Government opposes, arguing that such statements are relevant to showing Ms. Hutchins'  
 26 reasonable fear of harm posed by Defendant, as well as discerning Defendant's motives.

1 (Dkt. No. 769.) The Court agrees. That is, evidence of Defendant's disclosure of his  
 2 condition has the probative value of showing that Defendant sought to place Ms. Hutchins  
 3 under a great deal of trepidation.

4 As to Defendant's concern regarding prejudicial impact, while such testimony may  
 5 be prejudicial, this is not the relevant legal standard. Evidence need only be excluded if it  
 6 is (1) *unfairly* prejudicial and (2) such prejudice *substantially outweighs* its probative  
 7 value. Fed. R. Evid. 403. On the facts of the case, the Court deems evidence of statements  
 8 made by Defendant regarding his mental health not *unfairly* prejudicial. Nor would any  
 9 prejudice *substantially* outweigh its probative value. To the extent the Government seeks  
 10 to establish that Defendant actually has this medical condition, Defendant may lodge an  
 11 objection at trial. Until that time, however, the Court will not rule in the abstract.

12 Accordingly, Defendant's motion (Dkt. No. 766) is DENIED as it relates to the  
 13 suppression of statements made to Ms. Hutchins concerning Defendants "IED".

14       **C.     "Speculative" Testimony**

15       Defendant next asks the Court to exclude all "speculative" testimony. (Dkt. No.  
 16 766 at 9–12.) Specifically, he requests that it exclude: (1) Lindsay Hefton's testimony  
 17 concerning her belief that Defendant wished for her to commit the stalking crimes;<sup>1</sup> and  
 18 (2) Detective Kailey Kang's testimony that Defendant filed a police report after Ms.  
 19 Hutchins first filed her police report. (*Id.*) With respect to Defendant's first request, Ms.  
 20 Hefton's testimony regarding her state of mind as she was committing a crime is  
 21 testimony based on her personal knowledge and perception. *See* Fed. R. Evid. 701.  
 22 Accordingly, such testimony would not be based on theoretical speculation and is  
 23 therefore admissible. Defendant can challenge Ms. Hefton's testimony on cross  
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25       <sup>1</sup> Prior to co-operating with the Government and while Defendant was in jail, Ms. Hefton  
 26 sent harassing emails to victims in an attempt to conceal Defendant's role in the stalking  
 campaign. (*See generally* Dkt. No. 769 at 2.)

1 examination, but the Court will not preclude it *en toto*. Similarly, because Mr. Kang's  
2 testimony is a statement of fact based on personal knowledge as opposed to speculation, it  
3 too is admissible. *See Fed. R. Evid. 701.*

4 Accordingly, Defendant's motion (Dkt. No. 766) is DENIED with respect to the  
5 testimony of Ms. Hefton and Detective Kang consistent with the reasoning above.

6 **D. Leading Questions**

7 Defendant next requests that he be permitted to ask leading questions during direct  
8 examination of "investigative agents, informants, cooperating witness[es], [and]  
9 government experts." (Dkt. No. 766 at 10.) The Court expects that, by their very nature,  
10 these witnesses will be called on by the Government. If so, Defendant would be *cross-*  
11 examining these witnesses and would thus be entitled to ask leading questions. To the  
12 extent Defendant seeks a blanket approval to lead witnesses on direct examination, the  
13 Court denies his request. Under Federal Rule of Evidence 611, "leading questions should  
14 not be used on direct examination except as necessary to develop the witness's  
15 testimony." Fed. R. Evid. 611(c). The Advisory Committee Note to Rule 611(c) explains  
16 that "[t]he rule continues the traditional view that the suggestive powers of the leading  
17 question are as a general proposition undesirable." Fed. R. Evid. 611(c) advisory  
18 committee's note to 1972 amendment. While Defendant's sweeping request is denied, the  
19 Court will nonetheless consider future pleas by Defendant to ask leading questions on a  
20 witness-by-witness basis.

21 Accordingly, the Court DENIES Defendant's motion (Dkt. No. 766) for a blanket  
22 approval to lead witnesses on direct examination.

23 **E. Social Media**

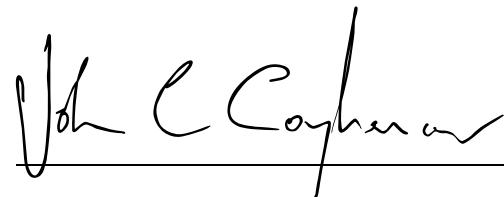
1           Defendant also requests that all social media posts be suppressed because they  
 2 were not “directed to any particular recipient” or otherwise sent by him.<sup>2</sup> (Dkt. No. 766 at  
 3 9–10.) The Court understands Defendant’s argument to be that because the conduct at  
 4 issue did not involve a direct communication between Defendant and an end-user, the  
 5 social media evidence lacks any relevance. (*Id.*) Defendant’s view would in effect  
 6 immunize would-be harassers from legal sanction were they to indirectly, as opposed to  
 7 directly, harass their victims. The Federal Rules of Evidence make no such distinction.  
 8 Instead, Rule 401 requires that the proffered evidence have a *tendency* to prove a fact in  
 9 issue. Here, the use of fake Instagram and LinkedIn accounts under the identities of  
 10 Defendant’s alleged victims to send harassing emails has at least *some* tendency to make  
 11 the Government’s theory of the case—that Defendant carried out the stalking campaign.  
 12 Rule 401 requires no more. But in any event, the social media evidence here would be  
 13 admissible as evidence that adds context to the Government’s case. *Gonzalez*, 110 F.3d at  
 14 941 (2d Cir. 1997).

15           Accordingly, Defendant’s motion (Dkt. No. 766) seeking to bar social media  
 16 evidence is DENIED.

17 **III. CONCLUSION**

18           For the foregoing reasons, the Court DENIES Defendant’s motion (Dkt. No. 766).

19           DATED this 31st day of January 2024.



20  
 21           John C. Coughenour  
 22           UNITED STATES DISTRICT JUDGE  
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25           <sup>2</sup> Defendant seeks to exclude emails sent by him, but forwarded to the victim on a  
 26 different account, on the grounds that the forwarding was someone else’s action. (Dkt. No.  
 766 at 9–10.)